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## COMMITTED TO COORDINATION?

### INTERGOVERNMENTAL COUNCILS AS A FEDERAL SAFEGUARD

JOHANNA SCHNABEL

#### 1. INTRODUCTION<sup>1</sup>

In 2003, Canadian provinces and territories solemnly established the Council of the Federation (CoF). According to the founding agreement, the new council was expected to revitalize not only interprovincial relations but also Canadian federalism in general. Provinces had been disappointed by federal actions for over a decade, claiming that the federal government had been encroaching on areas of provincial jurisdiction. Strengthening horizontal coordination, they expected, would not only contain the federal government but also provide provinces and territories with a new leadership role within the federation so that federal conflicts triggered by unilateral actions of the federal government would be reduced. In 2006, Australian states followed the Canadian example and established the Council of the Australian Federation (CAF). CAF stipulated similar objectives: revitalizing Australian federalism and reacting to federal encroachment. What these examples have in common is that they suggest a general tendency of subnational governments to consider horizontal coordination as a means to contain the federal government.

The aim of this research note is to present concepts and data that help to understand how intergovernmental councils (IGC) minimize what Jenna Bednar (2009) calls federal encroachment. Therefore, I suggest looking at intergovernmental councils as a federal safeguard (Bednar 2009). Intergovernmental councils such as CoF and CAF, but also the Presidents' Conference (*Conferencia de Presidentes*, PC) in Spain, the Deliberation Committee (DC) in Belgium or the Conference of Australian Governments (COAG) – as examples of councils that involve the federal government – provide governments with a formalized arena for coordination. IGC are vertical or horizontal meetings between members of government

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<sup>1</sup> I am grateful to Dietmar Braun, Ewoud Lauwerier, Sean Müller, Andrea Pilotti, the editors of the *Swiss Political Science Review*, and two anonymous reviewers for their feedback and comments on the different versions of this research note.

that take place on a more or less regular basis. I posit that intergovernmental councils can prevent the federal government from encroaching on subnational jurisdictions and that the extent to which a given council does so successfully depends on its design.

Intergovernmental councils operate in areas in which governments are interdependent. Given the benefits of hierarchical coordination (Scharpf 1997), the federal government faces incentives to enact unilateral solutions that encroach on subnational jurisdiction when policy problems emerge in these areas, which limits the discretion of subnational governments to design policies in accordance with local needs and preferences. Intergovernmental councils provide an arena for non-hierarchical coordination (Hueglin 2013), which can prevent the federal government from unilaterally restricting subnational discretion.

Adopting a micro-perspective on individual councils that compares councils both across and within federations, the primary aim of this research note is to present an original database on the operation of intergovernmental councils. Moreover, the research note seeks to show that the concept of federal safeguards can be applied to intergovernmental councils. Rather than testing hypotheses, I seek to indicate how the database can be used to apply the concept of federal safeguards empirically. Therefore, I explore a way to measure the effect of the intergovernmental safeguard. More importantly, I develop concepts that can be used to explain whether a given council is a strong safeguard.

The effect of the intergovernmental safeguard in preventing federal encroachment is measured by the extent to which federal encroachment is present or absent. I contend that two concepts are relevant to explain the effect of the intergovernmental safeguard: 'commitment to coordination' and 'dominance of the federal government'. It is different configurations of commitment to coordination and dominance of the federal government that determine the absence or presence of federal encroachment, and the concepts relate to structural incentives and not actual behavior of governments. If governments of both levels are committed to coordination, they design intergovernmental councils in a way that incentivizes participation in the development, adoption, and implementation of joint solutions. The reason is that commitment leads to the council adopting a problem-solving mode in which various interests and preferences are accommodated (Bolleyer 2009: 20). This increases the costs of exit. In the case of vertical councils, however, another concept comes to play: federal dominance, i.e. when the federal government chairs and organizes vertical

councils, weakens the intergovernmental safeguard and it undermines commitment to coordination because it makes coordination dependent on a federal government's willingness to coordinate. Thus, one should distinguish between horizontal and vertical councils when looking at intergovernmental councils as federal safeguards. In the case of horizontal councils, commitment explains the effect of a given council in eliminating federal encroachment. If commitment is high, horizontal councils are strong safeguards. In the case of vertical councils, however, dominance of the federal government is the main explanation and commitment matters only if the federal does not dominate the council.

To measure the level of commitment and the presence and absence of federal dominance, I am drawing on an original database that has been constructed within a larger research project on 235 intergovernmental councils in Australia, Austria, Belgium, Canada, Germany, Spain, Switzerland, and the United States.<sup>2</sup> To construct the database, data was collected from council websites, statutes and terms of reference, council reports, information provided by council staff, and secondary literature. To measure commitment to coordination, I have constructed a composite indicator.

The research note is structured as follows: I first elaborate the concept of federal encroachment as an instance of disruptive unilateralism in areas of interdependence and explain how it is measured (section 2) before introducing the intergovernmental safeguard as an institutional mechanism to prevent federal encroachment (section 3). I then develop the two concepts 'commitment to coordination' (section 4) and 'federal dominance' (section 5). The presentation of each concept is followed by a brief case study comparing two councils for illustration. A final section concludes.

## 2. FEDERAL ENCROACHMENT AS DISRUPTIVE UNILATERALISM

Scholars such as Bednar (2009) and de Figueiredo and Weingast (2005) have pointed to a fundamental problem of federal states: the federal government faces incentives to centralize power in his hands to prevent free riding and shirking by the constituent units.<sup>3</sup> This leads to federal encroachment into subnational jurisdictions that limit the discretion of

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<sup>2</sup> The outcome of this research project is my Ph.D. dissertation on intergovernmental councils as federal safeguards.

<sup>3</sup> Note that both scholars have also pointed to another fundamental problem of federalism in which disruptive behavior of subnational governments can lead to the disintegration of the federation.

subnational governments to act (see also Braun et al. 2017). While minor instances of federal encroachment do not make a federal system unstable, they can turn into system-threatening disturbances of the federal balance of power and undermine the federal character of a political system if they intensify and multiply (Bednar 2009; Benz and Broschek 2013; Landau 1973; Braun 2011).

In situations of interdependence (see Bolleyer and Thorlakson 2012), for example when powers overlap or when there is public pressure to harmonize, the federal government faces incentives to restore to hierarchical coordination and encroach (Scharpf 1997; Lazar 2006). In this research note, I define the following situations as federal encroachment being present: the federal government enacts a national solution, i.e. a policy solution valid across the federation, on its own (no joint solution); governments adopt a joint solution but the solution is imposed by the federal government on the other governments instead of being developed in a collaborative way<sup>4</sup> (imposed solution); governments develop and adopt a joint solution but the federal government fails to comply with it (non-compliance). An example for non-compliance is the Social Union Framework Agreement in Canada, in which the federal government agreed to consult the provinces on the use of the federal spending power but did not deliver on this promise in the aftermath (Lazar 2003; Warriner and Peach 2007; Fortin 2009). Regarding the imposition of a joint solution and non-compliance, note that variations are possible in the extent to which the joint solution is imposed and the extent to the federal government fails to comply with it.

### 3. THE INTERGOVERNMENTAL SAFEGUARD

Bednar (2009) contends that federal safeguards prevent the federal government from encroaching on subnational jurisdictions. Federal safeguards are institutions that provide incentives to the federal government not to encroach. There are different types of federal safeguards, defined by the harshness of their reaction and the costs this reaction imposes on the federal union. Retaliation and secession are the stronger safeguards but the costlier ones compared to milder safeguards such as structural safeguards (enumeration of powers of the federal government, horizontal fragmentation and incorporation of state interests); the

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<sup>4</sup> This often implies take-it-or-leave-it offers by financially superior governments to governments that depend on the financial assistance of the earlier.

judicial safeguard (the constitutional court); the popular safeguard (the electorate); and the political safeguard (the party system). To this list, I am adding intergovernmental councils as the intergovernmental safeguard. Because they provide governments with incentives to coordinate as equal partners in areas of interdependence, intergovernmental councils prevent federal encroachment in areas of interdependence. To do so, they develop, adopt, and implement joint solutions in a way that accommodates interests and preferences of all governments.

Intergovernmental councils are more or less regular face-to-face meetings of members of the executive branch of government. At minimum, intergovernmental councils consist of a plenary assembly of politicians (heads of government or cabinet ministers) chaired by one or several members of the council. For a council to be included here, face-to-face meetings of cabinet ministers or heads of government<sup>5</sup> need to have taken place on a more or less regular basis for several years in the past.<sup>6</sup> In addition to that, councils can set up a secretariat as well as working groups and committees in order for bureaucrats to prepare the meetings of the plenary assembly. While these meetings of bureaucrats are often called councils by name as well, they are committees of the intergovernmental council rather than separate councils since the plenary assembly sets them up to support its work. Different types of intergovernmental councils exist (Bolleyer 2009). Vertical councils differ from horizontal councils because the federal government is a full member of the earlier but not the latter. Generalist councils deal with a variety of policy areas as well as cross-sectoral matters while policy-specific councils focus on specific policy areas. National (or nation-wide) councils consist of at least 90% of the members of a federation (Parker 2015) in contrast to regional councils that are limited to a subgroup of subnational governments. The database introduced in this research note includes all these different types of councils with one exception. Bilateral councils (a type of regional councils) have been excluded except for the Bilateral Commissions (*comisiones bilaterales de cooperación*) in Spain. All other councils consisting of a subgroup of

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<sup>5</sup> In the United States, this refers to meetings of governors or (elected) heads of state departments such as attorney generals, secretaries of state, or tax commissioners.

<sup>6</sup> In Australia, frequent restructuring of the council system takes place. While these reforms do not affect the way councils operate, councils are merged or separated. Because most information is available on the system as it existed in 2009 (COAG 2009), the councils existing at this moment of time have been included in the database. Another exception are the Federal-Provincial-Territorial Council on Social Policy Renewal and the Provincial-Territorial Council on Social Policy Renewal in Canada. Both councils ceased to exist in the early 2000s. They have been included in the database because they had been established without an expiration date.

several subnational governments such as the Western Premiers' Conferences in Canada or Switzerland's various regional councils have been included.<sup>7</sup> To identify councils, I have screened council websites, repositories of councils,<sup>8</sup> references in secondary literature, and media reports.

The following two concepts related to the design of intergovernmental councils are useful to understand why a given council is a strong or weak federal safeguard: the extent to which governments are committed to coordination ('commitment to coordination') and the extent to which the federal government dominates vertical councils ('dominance of the federal government').

It is different configurations of commitment and federal dominance that matter, depending on the type of council. In the case of horizontal councils, dominance of the federal government is absent by default and commitment alone matters. In the case of vertical councils, the only configuration in which federal encroachment is minimized is when commitment is high and dominance of the federal government is absent (see Table 1). In all other configurations, the federal government either imposes a joint solution or fails to comply with a joint solution in the implementation phase. If dominance of the federal government is absent but commitment is low, there is a chance that councils fail to develop a joint solution or to ensure compliance.

[Table 1 about here]

#### 4. COMMITMENT TO COORDINATION

*Commitment to coordination* captures the disposition of councils to adopt a problem-solving mode when developing, adopting, and implementing joint solutions. Commitment matters most when governments decide to establish an intergovernmental council. If they are committed to coordination, they establish a strong institution and accept the constraints on their behavior this implies. If we follow the argument of path dependence (Mahoney 2000), the establishment of an intergovernmental council is a critical juncture that, since it

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<sup>7</sup> Regarding the United States, the various regional groupings that exist within the Council of State Governments (CSG), for example, have not been included as separate councils but as committees of the CSG.

<sup>8</sup> Such as the overview of intergovernmental meetings provided by the Canadian Intergovernmental Conferences Secretariat (CICS).

determines the future operation of the council, triggers self-reinforcing sequences that increase the costs of exit from coordination. In this sense, commitment to coordination has long-term implications. As a consequence, intergovernmental councils are able to develop joint solutions that go beyond individual and momentary interests of members, and that are accepted by all members (Bolleyer 2009). In addition to that, intergovernmental councils develop a long-term perspective in which coordination is not only an *ad hoc*-enterprise (Bolleyer 2009). Moreover, governments comply with these joint solutions because they are at least politically binding if not also legally binding. The higher the commitment to coordination is, the more likely an intergovernmental council is to develop a problem-solving orientation that goes beyond mutual adjustment and bargaining, that common interests emerge and that coordination becomes a compulsory exercise (Braun 2006; Scharpf 1988). If governments are committed to coordination, they establish intergovernmental councils that are highly institutionalized and that produce binding outcomes.<sup>9</sup> To measure commitment to coordination, I have constructed a composite indicator that aggregates the two indicators institutionalization and bindingness. The indicator measures commitment between 0% (low) and 100% (high).

[TABLE 2 ABOUT HERE]

Institutionalization and bindingness capture different aspects of the design of intergovernmental councils, and different dynamics of intergovernmental coordination: the process leading to joint solutions (institutionalization) and the content and type of joint solutions (bindingness). The following sections will elaborate on these points. The two dimensions are used to operationalize commitment to coordination and measure whether commitment is high or low. Institutionalization and bindingness are not independent from each other and we can expect interaction effects.<sup>10</sup> Consequently, institutionalization and bindingness are different dimensions of commitment to coordination, and they need to be weighted equally.

The higher the level of *institutionalization* “the more likely it is that intergovernmental transactions no longer exclusively express the momentary interest convergence of a group of

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<sup>9</sup> See online appendix for the coding scheme and the aggregation method.

<sup>10</sup> In fact, the two variables are correlated ( $r = 0.204$ ,  $p = 0.001$ ; significant at the 0.01 level) and they measure thus the same concept.



individual actors” (Bolleyer 2009: 25) and that actors develop common interests. Scharpf (1997) has argued that interaction modes differ in their institutional requirements and that problem-solving tends to have higher institutional demands than mutual adjustment (negative coordination) or bargaining.

Bolleyer (2009; 2006b) has measured the level of institutionalization of intergovernmental councils in Canada, Spain, Switzerland, and the United States. The indicators she chose are: regularity of meetings, existence of a secretariat, definition of functions and formal basis, decision-making, internal functional differentiation, and the status and precision of agreements. To measure the level of institutionalization as a dimension of commitment to coordination, I have excluded decision-making and the status and precision of agreements. The latter is included in the measure of bindingness. Decision-making has been excluded because the difference between consensus decision-making, unanimity, and majority vote is not clear when it comes to intergovernmental councils because there are several instances in which councils applied majority vote but only those members of the council having cast a positive vote must adhere to the decision. In addition to that, consensus mechanisms or unanimity decisions can have a stronger effect on the behavior of governments so that the effect of decision-making is less clear than Bolleyer suggests. Consequently, we find a high level of institutionalization if meetings take place several times a year, if the council has set up a permanent secretariat, if several (permanent) committees and working groups exist, and when a statute or similar document defines the functioning and organization of the council. The level of institutionalization is low when meetings take place *ad hoc*, when no secretariat exist, when the council has not set up committees and working groups, and when the functioning and organization rely on convention instead of a formal document.<sup>11</sup>

Outputs of intergovernmental councils are rarely legally binding (Poirier and Saunders 2015). Nevertheless, they can produce a certain degree of *bindingness* in the sense that the design of the joint solution determines the incentives to comply with it. The argument here is not a legal one. Rather, the intuition is that if governments design highly precise solutions and invest considerable amounts of money and autonomy, the costs of exit increase in the implementation phase. Bindingness is captured by the ‘level of coordination’ (Peters 2004; Braun 2008) and the ‘type of outcomes’. Drawing on Peters (2004), I distinguish four levels of

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<sup>11</sup> See online appendix for information on how each variable was coded.

coordination: negative coordination, positive coordination, integration of policy priorities, and integration of implementation strategies. Whereas negative coordination requires little investment of resources, positive coordination requires that governments give up some autonomy or pool some resources. Joint provision of public services or the establishment of joint agencies is an example of positive coordination. Bindingness increases when governments use councils for policy integration. I distinguish two types of policy integration with different levels of bindingness. Joint policy priorities and objectives constitute the first type. They commit governments to harmonizing their legislation, which implies an even higher investment in terms of autonomy they make governments accountable to each other. This effect intensifies when governments agree not only on general objectives but also on principles and strategies of implementation that define how the objectives are to be met, the second type of policy integration, which often requires some kind of monitoring. This limits divergent interpretations because mechanisms and objectives are clearly defined. Regarding the second variable, 'types of outputs', I distinguish four types: reports and recommendations; joint declarations; joint action plans and programs; and intergovernmental agreements. Reports and recommendations are mere declarations of intent and governments maintain the autonomy to deviate from them. Joint action plans and joint programs require that governments pool resources and invest autonomy because they become accountable to each other. This is also the case when joint bodies are established, which are less affected by the electoral cycle (Poirier and Saunders 2015). Intergovernmental agreements, finally, are binding in some federations but not in all federations and not in all areas (Poirier 2001). Where intergovernmental agreements are binding, incentives to comply with the joint solution are highest. But in any case, intergovernmental agreements formalize the political will of governments to work together.<sup>12</sup> The investment of autonomy is thus higher compared to

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<sup>12</sup> The distinction between intergovernmental agreements that are legally binding and those that are not is not mirrored in the database for practical reasons. In Switzerland, for example, horizontal agreements can be declared binding by the federal government upon request of a certain number of cantons in nine predefined areas (Art. 48a Federal Constitution of the Swiss Confederation). Thus, agreements are not binding by default and the legal status is independent from the council in charge. Similarly, the legal status of agreements can depend on other contingent factors that are not related to a council in the other federations in the database. Moreover, what matters here is that both types of agreements indicate higher bindingness than the other three types of outcomes because of their (quasi-)formal character. The distinction should and will be addressed in any in-depth analysis of the safeguarding effect of a given council, however.

informal solutions such as reports, declarations, and joint action plans.<sup>13</sup> Poirier (2001: 17) has emphasized that even intergovernmental agreements that are not legally enforceable can have a similar effect on the behavior of governments as legally enforceable solutions since they “are frequently negotiated with a high degree of formality, as if they were contracts”. This quasi-formal character of intergovernmental agreements implies that governments face much higher incentives to comply with the joint solution.

**Error! Reference source not found.** shows the aggregate level of commitment to coordination in Australia, Austria, Belgium, Canada, Germany, Spain, Switzerland, and the United States. The scores represent the mean level of commitment indicated by the total number of intergovernmental councils. Commitment to coordination is high in Australia, Belgium, Spain, and Switzerland (when excluding the regional policy-specific councils) since they score above the 57%-threshold, while governments are less committed in Austria, Canada, Germany, and the United States.

[Table 3 about here]

#### Joint Solutions in Education Policy in Canada and Switzerland

To illustrate how ‘commitment to coordination’, affects the extent to which intergovernmental councils minimize federal encroachment, this section compares two policy solutions in the same policy area in two decentralized federations and regarding subdomains where interdependence is pronounced: the funding of teaching of the second national language in Canada and the harmonization of basic education in Switzerland. In both cases, horizontal councils are in charge of this policy area so that federal dominance is absent. The Council of Ministers of Education, Canada (CMEC) and the Conference of Cantonal Directors of Education (*Erziehungsdirektorenkonferenz*, EDK) differ, however, in the level of

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<sup>13</sup> For both variables the codes reflect the highest level of coordination and the type of outcomes with the highest level of formalization to capture the general capacity of the council to produce binding outcomes. This means that if a council has produced both reports and intergovernmental agreements, the code for intergovernmental agreements has been assigned to this council. Provisions included in the formal basis of councils have been the basis for the identification of the level of coordination and the type of outcomes. However, if the council website, media reports or secondary literature suggest that a council has produced solutions with a higher degree of bindingness than the statute suggests, a higher code has been assigned.

commitment to coordination they indicate. While governments are committed to coordination in education policy in Switzerland (87%), Canadian provinces are not (18%).

The Intercantonal Agreement on Harmonisation of Compulsory Education (*Interkantonale Vereinbarung über die Harmonisierung der obligatorischen Schule*, HarmoS) adopted in 2007 is the joint solution adopted in Switzerland to harmonize basic education. The cantons had not only been able to make the federal government refrain from a modification of the education article of the Federal Constitution providing the federal government with more powers to intervene in education (Fischer, Sciarini, and Traber 2010). By enacting the HarmoS agreement, the cantons have then succeeded in preventing the federal government from using the subsidiarity clause of the constitutional article on education to intervene in basic education. HarmoS has been a genuine project of EDK, elaborated in several steps involving different bodies of EDK such as the secretariat, working group, and the plenary assembly. The outcome, an intergovernmental agreement, sets a general framework stipulating principles and objectives but leaves the cantons with enough discretion to adapt the implementation of the obligations of the agreement to local conditions (EDK 2015: 5–6) so that cantons are able to comply. Even though not legally binding, the political bindingness of HarmoS has been quite strong (EDK 2011) and even cantons that have not ratified the agreement for party political reasons have adapted their system accordingly (EDK 2015). EDK monitors the implementation of the agreement. The high level of institutionalization (89%) of EDK explains the comprehensiveness of the process in which the council developed a problem-solving orientation, and the strong bindingness of HarmoS is in accordance with the general tendency of the council to produce very binding outcomes (100%).

CMEC, in contrast, has not been able to prevent federal encroachment. In Canada, the federal government provides funds to the provinces for the teaching of the second national language. The amount of funding and the conditions attached have been largely decided unilaterally by the federal government. Every four to five years, the federal government announces its funding intentions and both levels of government sign a multilateral Protocol for Agreements for Minority-Language Education and Second-Language Instruction through CMEC as well as bilateral agreements regarding specific priorities. Given that CMEC merely produces communiqués and reports, it has little leverage on the federal government. CMEC issued several communiqués in which the provinces called for higher federal funding but the

federal government refused to listen. Thus, the weak collective voice of the provinces enabled the federal government to impose conditional funding and hereby encroach in a provincial jurisdiction. More importantly, the low level of commitment has prevented CMEC from developing a problem-solving mode in which provinces would develop joint action plans that define the use of federal funding. It has also prevented the council from harmonizing official language teaching in a way that federal involvement is not needed.

Though mere illustrations, these two examples show that commitment determines, for example, whether a council develops a problem-solving mode that enables it to solve a given policy problem itself so that federal intervention loses its justification.

## 5. DOMINANCE OF THE FEDERAL GOVERNMENT OF VERTICAL COUNCILS

To examine the safeguarding effect of a horizontal council, it is sufficient to look at its commitment score. In the case of vertical councils, a second variable comes into play: federal dominance of vertical councils means that the federal government (permanently) chairs meetings and/or provides the secretariat. Consequently, it calls meetings and sets the agenda. The argument behind federal dominance is a structural one that captures the federal government's *de jure* possibility to dominate vertical councils even though there are numerous examples where it turned this *de jure* power into *de facto* domination (see also Trench 2006).<sup>14</sup> Federal dominance gives the federal government major leverage over "joint" solutions so that they are less collaborative in character. Federal dominance enables the federal government to submit joint solutions as take-it-or-leave-it offers to the council for adoption and it introduces a shadow of hierarchy in intergovernmental coordination. If the federal government chairs meetings it can decide which items will be included in the agenda, and it can refuse items suggested by subnational governments. Moreover, as the chair of a council, the federal government can decide not to call meetings if it wants to go unilateral.<sup>15</sup> If the federal government provides the secretariat, it also has important power over the agenda and on the development of institutional interests of the council. This undermines the

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<sup>14</sup> For Canada see for example Inwood et al. (2011).

<sup>15</sup> This has been the case, to give an example, when the Canadian government decided to unilaterally adjust transfers to the provinces in 2014 and refused to negotiate a new Health Accord when the old one expired ("Medicare Defenders Set to Protest as Health Accord Expires" *The Globe and Mail*, 20.03.2014).

level of institutionalization of the vertical council and gives the federal government significant leverage over the bindingness of outcomes.

The federal government in fact dominates most vertical councils in the database (77.8%). This pattern holds true if one looks at the federations individually (Figure 1 **Error! Reference source not found.**). Except for Germany and Switzerland, the federal government dominates most vertical councils. What is more, it chairs several peak councils such as the Conference of Australian Governments (COAG) and Belgium's Deliberation Committee and provides their secretariat.

[Figure 1 about here]

#### Joint Solutions in Education and Fiscal Policy in Australia

To empirically illustrate the use of this concept when examining the safeguarding effect of vertical councils, this section compares policy solutions adopted in Australia in domains of fiscal and education policy in which interdependence is pronounced. To emphasize the effect of federal dominance, commitment is held constant (it is high in both instances). While in education policy, federal dominance is absent, the councils in charge of fiscal policy, the Council of Australian Governments (COAG) and the Ministerial Council on Federal Financial Relations, are dominated by the federal government.

The joint solution enacted in education policy is the Australian Curriculum (AC). The AC was enacted in a rather collaborative way by the education council and the Australian Curriculum, Assessment and Reporting Authority (ACARA), a body established by the education council. The education council developed the guidelines for curriculum development and ACARA elaborated the AC. Hence, the AC was neither enacted as a national solution by the federal government on its own, nor was it imposed by the federal government.<sup>16</sup> Smaller issues of compliance emerged in the aftermath,<sup>17</sup> but they constitute minor instances of federal encroachment and can be neglected for the sake of the argument

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<sup>16</sup> This is not to neglect that the federal government used its spending power to lure the states into agreeing to develop a national curriculum in the context of the "Education Revolution" (Harris-Hart 2010).

<sup>17</sup> "Compulsory Dispute Splits Curriculum Reform Team" *The Australian*, 16.09.2014.

here. In fact, the states were in favor of and even engaged in coordination of school curriculums (CAF 2007) and they participated in the elaboration of the AC. The actual work on the AC started when the federal government announced its “Education Revolution” (Reid 2009) and both levels of government signed the National Education Agreement in 2009. In fact, the federal government had to involve the states – via the education council – in the elaboration of the Australian Curriculum to implement its Education Revolution.

The federal government could entirely impose the Intergovernmental Agreement on Federal Financial Relations (IGA-FRR), a reform of the federal transfer system, upon the states. What is more, once the agreement was adopted, the federal government continued to impose conditional grants on the state and hence violated the agreement (McQuestin and Woods 2010; Fenna and Anderson 2012). Thus, the IGA-FRR is an example of federal imposition of and non-compliance with a policy solution. The states had called for a reform of funding arrangements (Carroll and Head 2010; CAF 2006) but the federal government initiated the reform only at a moment of time when it wanted to (Fenna and Anderson 2012). Since it calls the meetings and sets the agenda, it decided to call COAG meetings to present its intention to the states for the purpose of delivering on its election promises (Carroll and Head 2010). The Ministerial Council on Federal Financial Relations developed general parameters of a new agreement on funding arrangements. Its working groups were chaired by federal ministers, however. Moreover, the content of the agreement itself was to a considerable extent driven by priorities set by the federal government in its annual budget (Fenna and Anderson 2012). This means that the federal government practically submitted the agreement as a take-it-or-leave-it offer to the states for adoption.

## 6. CONCLUSIONS

In recent years, subnational governments have invested in horizontal intergovernmental councils to counterbalance the federal government and prevent it from encroaching on subnational jurisdictions. In this research note, I have suggested that intergovernmental councils are federal safeguards based on this observation.

The intergovernmental safeguard operates in areas of interdependence, where federal encroachment has disruptive effects on the federal peace. The character of policy solutions developed in areas of interdependence can be used as an indicator to measure the safeguarding effect of intergovernmental councils. Councils are strong safeguards if the

federal government refrains from imposing a policy solution on the subnational governments and if it complies with commonly agreed policy solutions. To examine the safeguarding effect and look for explanations, I have introduced two concepts: 'commitment to coordination' and 'dominance of the federal government' of vertical councils. When governments are committed to coordination they design councils in a way that the council adopts a problem-solving mode in which various interests and preferences are accommodated so that the benefits of coordination and the costs of exit increase, which reduces the incentives for the federal government to encroach. Thus, the effect of horizontal councils in tackling federal encroachment depends on the extent to which governments are committed to coordination. Compared to their Canadian equivalent, horizontal councils in Switzerland have indeed been more successful in solving problems in education policy in a collaborative way because Swiss governments are highly committed to coordination in this area – in contrast to their Canadian counterparts. Consequently, the horizontal council solved the problem in a way that federal intervention was not needed. In Canada, however, a low level of commitment prevented the provinces from speaking with one strong voice to counter federal encroachment.

In the case of vertical councils, commitment comes into play only if the federal government does not dominate the council. When the federal government chairs meetings, sets the agenda or provides the secretariat, it can impose a solution on the subnational government and it faces fewer incentives to comply with the solution in the implementation phase even if governments are committed to coordination. In Australia, federal dominance is absent in the education council, and even though the federal government had some leverage over the development of a national curriculum it had to involve the states, via the education council and ACARA, and could not impose a solution on them. Federal encroachment was very pronounced in the reform of the transfer system on the states (the adoption of the IGA-FFR). The reason is that its dominance of both COAG and the Council on Federal Financial Relations enabled it to decide to develop the IGA-FFR on its own and to submit it to the council as a take-or-leave-it offer. Moreover, it refused to comply with the agreement in the implementation phase.

Federal dominance is absent by default in horizontal councils, which suggests that they are the stronger safeguards. In fact, subnational governments even use horizontal councils to counterbalance the federal government as reports and communiqués issued by horizontal councils such as the Council of the Federation in Canada (CoF), the Conference of Prime



Ministers (*Ministerpräsidentenkonferenz, MPK*) in Germany or the Council of the Australian Federation (CAF) as well as policy-specific councils indicate (see also Watts 2006). They use these arenas in order to find common positions on issues they seek to address to the federal government. Recently for example, Swiss cantons via the Conference of Cantonal Governments (KdK) and the Conference of Cantonal Finance Directors jointly pressured the federal government to compensate them for losses emanating from a federal reform of corporate taxes (*Unternehmenssteuerreform III*)<sup>18</sup>. Subnational governments consider that speaking with one voice when claiming adequate funding or calling upon the federal government not to intervene into subnational jurisdiction provides them with a stronger position to counterbalance federal power. While such horizontal institutions have existed in Austria, Germany, and the United States for several decades, subnational governments in Australia, Canada, Spain, and Switzerland have invested in horizontal coordination since the 1990s to counter centralization. Statutes of the Council of the Australian Federation (2006),<sup>19</sup> the Council of the Federation (Canada, 2003),<sup>20</sup> the Conference of Governments of the Autonomous Communities (Spain, 2010), and the Conference of Cantonal Executives (Switzerland, 1993) explicitly stipulate the objective of forging a common front towards the federal government. Referring to the Canadian example, Bolleyer summarizes constituent units' motivations behind horizontal coordination, finding that Canadian provinces turned *ad hoc* Annual Premiers Conferences (APC) into the Council of the Federation

*"especially because the federal government regularly tried to play one province off against another and had considerable success in doing so. Correspondingly, the individual autonomy losses arising from the stronger organizational backup of the council were acceptable despite the existing intraprovincial competitive pressure — because the CoF strengthened collective provincial autonomy protection"* (Bolleyer 2006a: 485).

What is more, because the federal government dominates most vertical councils, the Canadian federation has developed a system in which most vertical councils have a purely

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<sup>18</sup> "Kantone Wollen Leichteres Paket" *Neue Zürcher Zeitung*, 13.12.2014, p. 13.

<sup>19</sup> Before Australian states established the Council of the Australian Federation (CAF), a so-called Leaders' Forum existed. However, this council was much more informal and weakly organized. Consequently, the establishment of CAF is an important turning point.

<sup>20</sup> Strictly speaking and similar to CAF, the Council of the federation is not a new council. Before CoF was established in 2003, Annual Premiers Conferences (APC) were organized for the purpose of coordination among heads of government of Canadian provinces and territories. After experiencing federal unilateralism for over a decade, provinces and territories decided to invest in a more institutionalized version of APC in order to contain federal opportunism. Thus, the establishment of CoF in 2003 marks an important turning point.

horizontal counterpart that provinces use to prepare vertical meetings. Since the 1990s, provinces have become increasingly aware that they need to find consensus among themselves first before negotiating with the federal government. Frequently, they have criticized federal dominance of vertical councils, claiming that the federal government refused to put salient matters on the agenda that were of particular interest to the provinces (Inwood et al. 2011; Lazar 2003: 6).

The aim of this research paper was to present an original database on the operation of intergovernmental councils and to illustrate how this database can be used to examine the function of intergovernmental councils within a federal system. In contrast to Bolleyer's study on the level of institutionalization and integration of IGC, I have suggested to use concepts related to the operation of councils when looking at the safeguarding effect of intergovernmental councils. I have thus applied the concept of federal safeguards to intergovernmental councils. Because the scope of this research note was limited to the presentation of the database and the definition and operationalization of intergovernmental councils as federal safeguards, further research is needed. An item on the research agenda should be the development of testable hypotheses that take into account the specific context in which individual councils operate such as different types and degrees of interdependence. Moreover, HarmoS, the funding of official language teaching in Canada, the AC, and the IGA-FFR are instances in which a policy solution has been jointly enacted so that the strongest type of federal encroachment, namely the decision of the federal government to enact its own policy solution in areas of subnational jurisdiction because governments fail to succeed in jointly adopting a policy solution has not been discussed in this research note. While a lack of commitment to coordination certainly accounts for such instances, there are situations in which the federal government can enact its own solution even though governments are committed to coordination. This is the case when a policy problem is federally salient. This means that councils exclude matters from their agenda because of their contentiousness. Further research on the effect of the intergovernmental councils should look at these situations and identify the conditions under which a council fails to reach agreement.

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## Tables

Table 1: Configurations that explain the absence of presence of federal encroachment in the case of vertical councils

COMMITMENT	DOMINANCE OF FG	DISRUPTIVE UNILATERALISM
0	0	no joint solution or lack of compliance
1	0	joint solution
0	1	no joint solution or imposed solution
1	1	imposed solution and/or lack of compliance of the federal government

Table 2: Dimensions and variables used to operationalize commitment to intergovernmental coordination

COMMITMENT	
INSTITUTIONALIZATION	BINDINGNESS
<ul style="list-style-type: none"> <li>- Regularity of meetings</li> <li>- Secretariat</li> <li>- Number of Committees</li> <li>- Definition of Functions</li> </ul>	<ul style="list-style-type: none"> <li>- Level of Coordination</li> <li>- Types of Outcomes</li> </ul>

Table 3: Mean commitment to coordination in eight federations (percentages indicate the mean score of all intergovernmental councils within each federation)

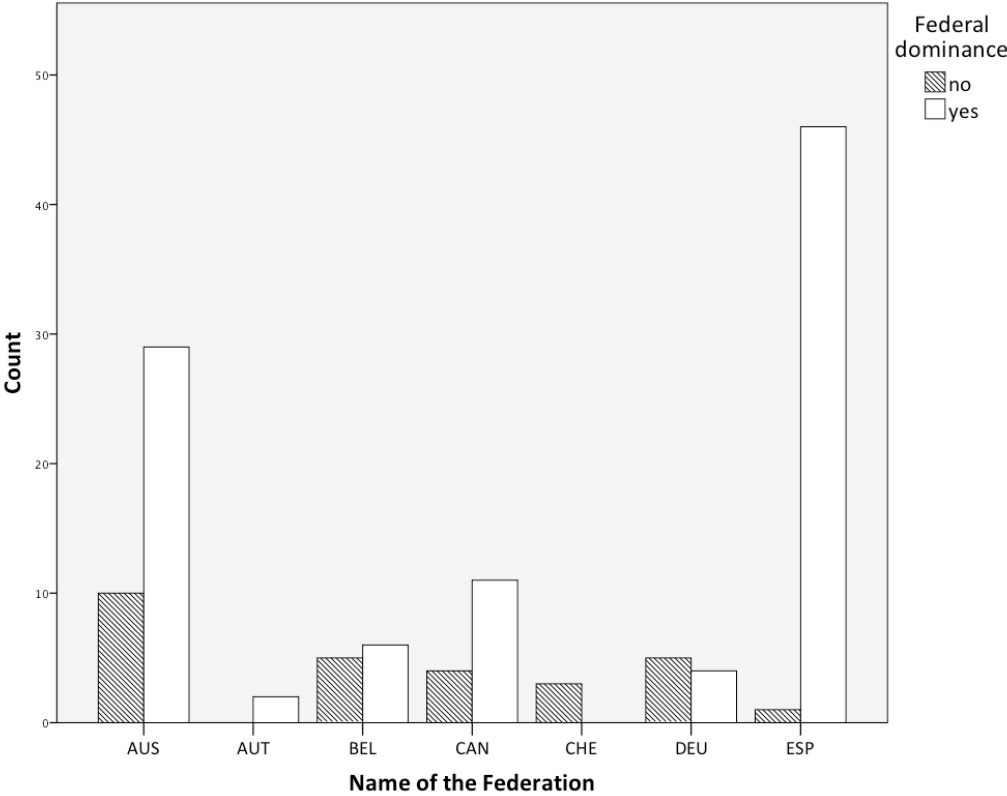
FEDERATION	NUMBER OF COUNCILS <sup>21</sup>	COMMITMENT	STD. DEVIATION	VARIANCE
AUSTRALIA	41	<b>64.52%</b>	.20893	.044
AUSTRIA	13	<b>30.51%</b>	.19057	.036
BELGIUM	10 <sup>22</sup>	<b>70.07%</b>	.26271	.069
CANADA	28	<b>46.56%</b>	.24807	.062
GERMANY	25	<b>48.61%</b>	.21689	.047
SPAIN	49	<b>70.49%</b>	.15210	.023
SWITZERLAND (excl. regional policy-specific councils)	52 (25)	<b>56.47%</b> <b>(61.92%)</b>	.24408 (.21938)	.060 (.048)
UNITED STATES	22	<b>49.91%</b>	.18817	.035

<sup>21</sup> Indicates the number of councils where sufficient information could be found to determine the level of commitment only.

<sup>22</sup> More councils exist in Belgium than indicated here. Yet, these councils have been excluded since sufficient information on their functioning could not be found.

Source: own data

Figure 1: Federal dominance of vertical councils in each federation.



Bars indicate the number of vertical councils. Source: own data